

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAIAH N. WILLIAMS,

No. C 07-4464 CW

Plaintiff,

## ORDER RESOLVING MOTIONS IN LIMINE

V.

DEBRA WILLIAMS,

Defendant.

## ORDER RESOLVING MOTIONS IN LIMINE

Plaintiff Isaiah Williams, an inmate at Pelican Bay State  
10 Prison (PBSP), brings this 42 U.S.C. § 1983 action against  
11 Defendant Debra Williams. The Court held a pretrial conference  
12 and heard arguments regarding the parties' motions in limine on  
13 June 26, 2013. After considering the parties' oral argument and  
14 submissions, the Court now issues the following rulings:

I. Plaintiff's Motions in Limine

A. MIL No. 1: Motion to Exclude References to Plaintiff's Past Criminal Convictions and Rule Violations

18        This motion is GRANTED. Defendant may not present evidence  
19 or argument that identifies the specific nature or circumstances  
20 of Plaintiff's conviction or any evidence relating to Plaintiff's  
21 past rule violations. Defendant may, however, present evidence  
22 and argument that (1) Plaintiff was convicted of a violent felony  
23 and (2) the unit where Plaintiff currently resides is used to  
24 house violent prisoners. Defendant may also present evidence or  
25 argument pertaining to the rules violation report arising from the  
26 August 16, 2006 incident which is the subject of this action.

1           B.     MIL No. 2: Motion to Exclude References to Plaintiff's  
2           Alleged Gang Affiliation

3           This motion is DENIED. Plaintiff's membership in a white  
4           supremacist gang is a key issue in this case, as Plaintiff's own  
5           expert asserts in his report. See Pl.'s Ex. 20, R. Subia Report,  
6           at ¶ 30 ("In the present case, the risk of harm was heightened due  
7           to the specific types of inmates, Nazi Low Rider (white supremacy)  
8           and Black Guerilla Family (Black)."). Concealing this fact from  
9           the jury would deny them access to relevant information while  
10          creating administrative difficulties for both parties. Cf. United  
11          States v. Price, 13 F.3d 711, 720 (3d Cir. 1994) (upholding a  
12          district court's decision to admit conversations in which a party  
13          used racial epithets because "it would have been virtually  
14          impossible to redact this or the other conversations without  
altering their substance").

15           C.     MIL No. 3: Motion to Exclude References to Plaintiff's  
16           Alleged Nickname, "Sinner"

17           This motion is GRANTED. Plaintiff's nickname is prejudicial  
18           and serves no probative value here. All references to Plaintiff's  
19           nickname should be redacted from any otherwise admissible  
exhibits.

20           D.     MIL No. 4: Motion to Exclude References to and Evidence  
21           of Plaintiff's Tattoos

22           This motion is DENIED. The two photographs Plaintiff seeks  
23           to exclude do not reveal the tattoo of his nickname and include  
24           mostly blurry images of his other tattoos. To the extent any of  
25           his tattoos are visible in these photographs, they are no less  
26           relevant and no more prejudicial than any other evidence of  
27           Plaintiff's alleged membership in a white supremacist gang.

1 E. MIL No. 5: Procedure for Exchange of Evidence Relating  
2 to MILs No. 1-4

2 This motion is DENIED as unnecessary.

3 F. MIL No. 6: Motion to Exclude Evidence or Argument  
4 Relating to Prior Decisions by Other Tribunals or  
5 Agencies

5 This motion is GRANTED.

6 G. MIL No. 7: Motion to Exclude Statements About State  
7 Finances and the Use of Taxpayer Funds to Satisfy Any  
8 Judgments in this Case

8 This motion is GRANTED as unopposed.

9 H. MIL No. 8: Motion to Exclude Undisclosed or Improper  
10 Expert Testimony

11 This motion is GRANTED in part. Defendant may not present  
12 any undisclosed expert testimony. Furthermore, Defendant may not  
13 refer to herself as an "expert." Allowing Defendant to offer  
14 "expert" testimony at trial would be unduly prejudicial because  
15 her judgment is directly at issue in this case. While Defendant  
16 may testify about her experience as a correctional officer with  
17 the California Department of Corrections and Rehabilitation (CDCR)  
18 or her subjective belief that she used appropriate force, she may  
19 not characterize her views as expert opinion.

20 I. MIL No. 9: Motion to Exclude Expert Testimony of Curtis  
21 Cope

22 This motion is GRANTED in part. A "trial court has 'broad  
23 discretion' in assessing the relevance and reliability of expert  
24 testimony." United States v. Finley, 301 F.3d 1000, 1007 (9th  
25 Cir. 2002) (quoting United States v. Murillo, 255 F.3d 1169, 1178  
26 (9th Cir. 2001)). To qualify as an expert, a witness must have a  
27 sufficient level of "scientific, technical, or other specialized  
28 knowledge" to "help the trier of fact to understand the evidence  
or to determine a fact in issue." Fed. R. Evid. 702(a).

1       Here, Defendant has not established that her expert, Curtis  
2 Cope, satisfies this requirement. Cope has no training or  
3 experience as a correctional officer nor any specialized knowledge  
4 of CDCR facilities and procedures. Although he served as a police  
5 officer for several decades, this experience does not make him an  
6 expert in correctional policy. Here, especially, Cope's police  
7 experience is unlikely to aid the jury in determining whether  
8 Defendant used appropriate force because Defendant made her use-  
9 of-force decision while stationed at a control booth in a maximum  
10 security prison that Cope has never visited. Cope's police  
11 training therefore does not qualify him to offer expert testimony  
12 about the propriety of Defendant's conduct in this situation,  
13 which is unique to the correctional context.<sup>1</sup>

14 Cope's police experience does, however, qualify him to offer  
15 expert testimony about the specific weapon Defendant used to  
16 subdue Plaintiff. Specifically, Cope may testify about the range  
17 and force of the "40mm less lethal weapon," about the range and  
18 effectiveness of pepper spray, and about whether Defendant's  
19 decision to use the 40mm less lethal weapon on August 16, 2006 was  
20 appropriate.

21 J. MIL No. 10: Motion Regarding Plaintiff's Shackles and  
22 Garments During Trial

This motion is DENIED.

<sup>1</sup> None of Defendant's cited cases suggests otherwise. Each of the cases she cites features police officers testifying as experts on "police procedures and policies" -- not prison procedures and policies. See, e.g., Larez v. City of Los Angeles, 946 F.2d 630, 635 (9th Cir. 1991) ("Fyfe was formerly a New York City police officer, and was qualified as an expert on proper police procedures and policies.").

1 K. MIL No. 11: Motion to Permit Telephone Communications  
2 Between Plaintiff and His Counsel During Trial

3 This motion is resolved as set forth in the Court's July 2,  
4 2013 order regarding telephone access. See Docket No. 192.

5 L. MIL No. 12: Motion Regarding Evidence Preservation and  
6 Alleged Discovery Abuses

7 Plaintiff incorporates by reference his previous motion  
8 regarding Defendant's alleged discovery abuses. However, he fails  
9 to offer any new argument or evidence in support of the motion.  
10 Magistrate Judge Beeler denied his previous motion on June 20,  
11 2013, Docket No. 179, and this Court denied Plaintiff's subsequent  
12 request for relief from Judge Beeler's decision. Accordingly,  
13 this motion is DENIED.

14 As stated in the Court's order denying Plaintiff's request  
15 for relief from Judge Beeler's order, if Plaintiff has admissible  
16 evidence showing that any witness, including Defendant,  
17 misrepresented the availability of certain CDCR photographs or  
18 training records, he may use that evidence to impeach that  
19 specific witness.

20 II. Defendant's Motions in Limine

21 A. MIL No. 1: Motion to Exclude Expert Testimony of Richard  
22 Subia on Liability

23 This motion is DENIED. Plaintiff's expert, Richard Subia,  
24 may testify that Defendant's actions were negligent, grossly  
25 negligent, or undertaken with reckless disregard for Plaintiff's  
26 safety. Subia may not, however, testify that any of these  
27 descriptions of Defendant's conduct represents the proper legal  
28 standard to be applied in this case.

B. MIL No. 2: Motion to Exclude Expert Testimony on Witness Credibility

This motion is GRANTED in part. Subia may testify about any specific record-keeping policies or procedures that cast doubt on any of Defendant's representations that certain CDCR records are unavailable or do not exist. Subia may also opine that Defendant's failure to check for Inmate Powell in the corridor before opening Plaintiff's cell was wrongful and led to of Plaintiff's injuries. He may base that testimony on his lay person's conclusion that Defendant could have seen Powell from the control booth, based on the photographs. Subia may not, however, offer expert opinion regarding the view from the control booth of the corridor. Subia has never visited the control booth and, as such, any testimony he offers on this particular subject would be based on photographs of the control booth that the jurors may view for themselves.

16 Subia is also barred from testifying that Defendant's  
17 "inability to recall the search of the cell and subsequent  
18 conversation" with Plaintiff is somehow "disingenuous" or an  
19 "attempt to mislead this court about what actually occurred." R.  
20 Subia Report ¶ 23.

21 C. MIL No. 3: Motion to Exclude Reference to Alleged  
22 Failures of CDCR to Produce Evidence

23        This motion is GRANTED in part. As noted above, Plaintiff  
24 may present evidence of CDCR's alleged failure to produce evidence  
only if it is relevant for impeachment purposes.

26 D. MIL No. 4: Motion for an Order That Plaintiff Be  
Shackled for Trial

27 This motion is GRANTED as unopposed.

1 E. MIL No. 5: Motion to Exclude Undisclosed Expert  
2 Testimony

3 This motion is GRANTED in part. Subia may testify that  
4 Defendant "acted with disregard for Post Orders and her own  
5 personal practice, and was highly trained to avoid this very  
6 circumstance." Docket No. 162, Pl.'s Witness List, at 1. This  
7 opinion was plainly disclosed in Subia's expert report. See R.  
Subia Rep. ¶¶ 25-30.

8 Subia may not testify, however, that CDCR "staff members have  
9 at times taken retaliatory action against inmates for filing  
10 formal complaints and that the facts and circumstances of this  
11 case suggest that is what happened here." Pl.'s Witness List, at  
12 1. Although this opinion was disclosed in Subia's expert report,  
13 its probative value is substantially outweighed by its prejudicial  
14 effect. This testimony is therefore inadmissible under Rule 403.

15 CONCLUSION

16 The parties' motions in limine (Docket Nos. 173, 176) are  
17 resolved as set forth above.

18 IT IS SO ORDERED.

19  
20 Dated: July 8, 2013

  
21 CLAUDIA WILKEN  
22 United States District Judge  
23  
24  
25  
26  
27  
28